UNITED STATES
v.
HOUSTON BOWMAN ET AL.

IBLA 73-323 Decided December 28, 1973

Appeal from decision (Arizona Contest Nos. A-4845, 4846 and 4847) of Administrative Law Judge Robert W. Mesch declaring certain mining claims null and void for lack of discovery.

Affirmed.

Mining Claims: Determination of Validity--
Mining Claims: Discovery: Generally

To constitute a discovery upon a mining claim there must be physically exposed within the limits of the particular claim minerals in such quality and quantity to warrant a prudent man in expending his labor and means, with a reasonable prospect of success, in developing a valuable mine.

If a claimant has not taken the necessary steps to obtain a discovery of a valuable mineral deposit within the limits of a mining claim, it is immaterial that he may have been prevented from making the discovery by action of a third party.

Mining Claims: Contests--Mining Claims:
Determination of Validity--Rules of Practice: Government Contests

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of evidence that the claim is valid.

APPEARANCES: Dudley S. Welker, Esq., Anderson, Welker and Flake of Safford, Arizona, for appellants; Fritz L. Goreham, Esq., Office of the Solicitor, U.S. Department of Interior, Phoenix, Arizona, for the Government.

OPINION BY MR. GOSS

Houston Bowman, J. P. Ford, R. H. Ford, Abe L. Reid, and John Reid have appealed to the Secretary of the Interior from an Administrative Law Judge's decision dated February 21, 1973. The decision declared the Bright Star, Uncle Sam, Davis Basin Tunnel, Brushy Spring, Silver King, Christina, Taft, and Pearl lode mining claims to be null and void on the ground that they have not been perfected by the discovery of a valuable mineral deposit.

The three contests were initiated by the issuance of complaints by the Bureau of Land Management challenging the validity of the mining claims involved on the basis that minerals had not been found within the limits of the claims in sufficient quantities to constitute a discovery under the mining laws. The three cases were consolidated in a single proceeding and a hearing was held on November 2, 1972, at Safford, Arizona. A copy of the Judge's decision is attached hereto. His summary is in accord with the testimony in the record. His statement of the law is precise and accurate.

On appeal to the Secretary, appellant in general raises the same contentions discussed below. We have reviewed the record and conclude the Judge's discussion and findings are correct.

Robert A. McColly, the Government's geologist, testified that (1) he examined the claims; (2) samples were taken for assaying from the best looking material he could find on each of the claims; and (3) based on the lean mineral values reflected by assays of the samples, it was his opinion that sufficient values had not been found within any of the claims to justify a person of ordinary prudence in commencing a mining operation or in developing the claims. This testimony and supporting exhibits of assay certificates constituted a prima facie case by the Government of no discovery of a valuable mineral deposit within the claims.

The claimants presented testimony of a mining engineer, Kay W. Foote, who stated that the geologic evidence was such that "it would indicate then that there must be very strong mineralization" under the Escabrosa limestone. The testimony of Foote and of appellant Bowman with respect to the extent and the quality of materials found on the claims did not rebut the Government's showing. While assay information was submitted detailed information as to the estimated

extent of valuable ore on a particular claim is not in evidence. The law is clear that a mining claimant must show as to each claim that he has found a mineral deposit which satisfies the tests for discovery. United States v. Bunkowski, 5 IBLA 102, 79 I.D. 43 (1972). The evidence submitted herein was of a general nature related, apparently, to all the claims. It is not enough to offer evidence for the claims in a group. United States v. Block, 12 IBLA 393, 80 I.D. 571 (1973).

Appellant alleges that the San Carlos Apache Tribe prevented development of the claims. If a claimant has not taken the necessary steps to obtain a discovery, it is immaterial that he may have been prevented from making the discovery by action of a third party. See United States v. Frank Coston, A-30835 (Feb. 23, 1968).

The Judge concluded: "The evidence clearly establishes that valuable mineral deposits have not as yet been found within the limits of the claims. At best, the claims simply warrant prospecting or exploration in an attempt to ascertain whether valuable mineral deposits might be found within the claims." The record compels the finding that no discovery has been made on the contested claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Administrative Law Judge is affirmed.

Joseph W. Goss, Member

We concur:

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Douglas E. Henriques, Member

_____
Martin Ritvo, Member

United States Department of the Interior
Office of Hearings and Appeals
Hearings Division
6432 Federal Building
Salt Lake City, Utah 84111

APPENDIX
IBLA 73-323

February 21, 1973

DECISION

UNITED STATES OF AMERICA,	:	ARIZONA 4845
	:	
Contestant	:	Involving the Bright Star,
	:	Uncle Sam and Davis Basin
v.	:	Tunnel lode mining claims,
	:	situated in T. 4 S., R. 19
HOUSTON BOWMAN,	:	E., GSR Meridian, Graham
	:	County, Arizona.
Contestee	:	

. . . . . .

UNITED STATES OF AMERICA,	:	ARIZONA 4846
	:	
Contestant	:	Involving the Brushy
	:	Spring lode mining claim,
v.	:	situated in T. 5 S.,
	:	R. 19 E., GSR Meridian,
HOUSTON BOWMAN, J. P. FORD,	:	Graham County, Arizona.
R. H. FORD and ABE L. REID,	:	
	:	
Contestees	:	

. . . . . .

UNITED STATES OF AMERICA,	:	ARIZONA 4847
	:	
Contestant	:	Involving the Silver
	:	King, Christina, Taft
v.	:	and Pearl lode mining
	:	claims, situated in
HOUSTON BOWMAN and	:	T. 4 or 5 S., R. 19
JOHN REID, :		or 20 E., GSR Meridian,
	:	Graham County, Arizona.
Contestees	:	

Preface

Pursuant to 43 CFR, Part 4, the Arizona State Office, Bureau of Land Management, Department of the Interior, issued complaints attacking the validity of the subject mining claims. The complaints charged, among other things, that the mining claims are invalid because "minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery."

The three cases were consolidated and a hearing was held on November 2, 1972, at Safford, Arizona. The contestant was represented by Fritz L. Goreham, Office of the Solicitor, Department of the Interior, Phoenix, Arizona. The contestees were represented by Dudley S. Welker of the law firm of Anderson, Welker & Flake of Safford, Arizona. Post-hearing briefs have been submitted by the parties.

The Law

Before considering the evidence, it would seem worthwhile to set forth certain principles of law that are applicable to this proceeding.

In order for a mining claim to be valid, there must be a discovery of a valuable mineral deposit (as distinguished from a mere finding of some mineralization) within the limits of the claim.

In East Tintic Consolidated Mining Company, 40 L.D. 271 (1911), the Department stated:

> . . . The exposure, however, of substantially worthless deposits on the surface of a claim; the finding of mere surface indications of mineral within its limits; the discovery of valuable mineral deposits outside the claim; or deductions from established geological facts relating to it; one or all of which matters may reasonably give rise to a hope or belief, however strong it may be, that a valuable mineral deposit exists within the claim, will

> neither suffice as a discovery thereon, nor be entitled to be accepted as the equivalent thereof. . . . (p. 273)

The East Tintic case, together with other similar Departmental decisions, was cited with approval by the Court in Henault Mining Company v. Tysk, 419 F. 2d 766 (9th Cir., 1969), cert. den., 398 U.S. 950 (1970), in support of the proposition that:

> . . . A reasonable prediction that valuable minerals exist at depth will not suffice as a "discovery" where the existence of these minerals has not been physically established. (p. 768)

In affirming a finding by the Department of the Interior that certain gold claims had not been perfected by valid discoveries, the Court in the Henault case also stated:

> No prudent man would proceed to the development of a mine on the surface showings we have here. He would drill to ascertain whether values exist at depth. If they do exist he would then proceed to development on the basis of that showing. . . .
>
> The further exploration by drilling as recommended by Henault's expert is not then in the nature of development of a discovered lode. It is a search for values not yet discovered, the discovery of which would justify development. (p. 769)

A valuable mineral deposit is an occurrence of mineralization of such quality and quantity as to warrant a person of ordinary prudence in the expenditure of his time and money in the development of a mine and the extraction of the mineral. The mineral deposit that has been found must have a present value for mining purposes.

In Chrisman v. Miller, 197 U.S. 313 (1905), the Court quoted with approval:

> . . . the mere indication or presence of gold or silver is not sufficient . . . . The mineral must exist in such quantities

> as to justify expenditure of money for the development of the mine and the extraction of the mineral. . . . (p. 322)

An occurrence of mineral that simply warrants the further expenditure of labor and means in prospecting or exploration in an effort to ascertain whether the mineralization that has been found is sufficient (or whether other mineralization might be found that might be sufficient) to justify the actual working of the property does not constitute a valuable mineral deposit within the purview of the mining laws. The test is whether the facts warrant the development of the property, and not whether the facts warrant prospecting or exploration in an attempt to ascertain whether the property might warrant development.

In Chrisman v. Miller, supra, some oil had been found seeping at the surface within the limits of an oil placer mining claim. The Court stated with respect to this finding of mineralization:

> It does not establish a discovery. It only suggests a possibility of mineral of sufficient amount and value to justify further exploration. (p. 320)

In Converse v. Udall, 262 F. Supp. 583 (D. Ore., 1966), 399 F. 2d 616 (9th Cir., 1968), cert. den., 393 U.S. 1025 (1969), the Courts affirmed the action of the Department of the Interior in drawing a sharp distinction between "exploration" for and "discovery" of a valuable mineral deposit. Both Courts recognized, as stated by the District Court, that:

> . . . if one has found only enough mineral to justify further "exploration," as yet he has not made a "discovery," but if he has found enough mineral to justify a "development," then a "discovery" has been made. (p. 595)

The Evidence

The mining claims were located on various dates between 1905 and 1930. For the most part, they were located by different individuals. With the exception of two claims

that overlap in part, the claims are separated from each other by varying distances. There does not appear to be any direct relationship or connection between any of the claims.

The claims are situated near the San Carlos Indian Reservation on lands that were withdrawn in 1934 from all forms of disposal pending restoration to tribal ownership. See 54 I.D. 559 (1934). The claims are between Safford and Globe, Arizona. They are in an area of rough terrain with alternating ridges and canyons. Only one of the claims, the Bright Star, is accessible by road. The other claims are from a quarter of a mile to three miles from the nearest roads.

There are some old workings on each of the claims except the Brushy Spring claim. There is no credible evidence that any minerals have been produced from any of the claims. A 1936 publication by the Arizona Bureau of Mines states that the past mineral production for the district was just over 60 tons of copper. This production came from property other than the contested mining claims. The contestees assert that the only reason the claims have not or are not being economically and profitably operated is "because of the political circumstances and the difficulty being caused by the acts of the San Carlos Apache Tribe."

Robert A. McColly, a geologist employed by the Bureau of Land Management, examined all of the claims except the Brushy Spring claim in the latter part of 1971. He took a sample for assaying from the best looking material that he could find on each of the claims. Mr. McColly examined the Brushy Spring claim during the first part of 1972. He did not find any workings on the claim or any mineralized outcroppings that could be sampled. Mr. McColly expressed the opinion, based upon his education, experience and examination of the claims, that sufficient mineralization had not been found within any of the claims to justify a person of ordinary prudence in commencing a mining operation or in developing the claims. He did, however, state that the claims might warrant exploration either by geophysical work or by drilling in an attempt to find valuable mineral deposits at depth.

Kay W. Foote, a mining engineer who was retained by the contestees, examined the claims on several occasions during 1971 and 1972. He found that there was "a very interesting mineralized zone" in the area of the claims

(Tr. 67). He expressed the opinion that the geologic evidence was such that "it would indicate then that there must be very strong mineralization" at depth (Tr. 68). Mr. Foote further testified:

> Q. If you were evaluating this property for one of your employers, what recommendation would you make to them?
>
> A. Oh, the first and obvious thing is geophysics or, if possible, and then a very accurate geologic map. There's no accurate geologic map of the area at present. And then, of course, the actually following down some of the veinlets to the underlying formations, the underlying Martin formations.
>
> Q. And would you recommend drilling the property?
>
> A. This would be the easiest way of prospecting it. (Tr. 69)

The evidence clearly establishes that valuable mineral deposits have not as yet been found within the limits of the claims. At best, the claims simply warrant prospecting or exploration in an attempt to ascertain whether valuable mineral deposits might be found within the claims. The evidence supports the charge in the complaints that "minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery."

The contestees, in effect, contend that the mining claims cannot or should not be declared invalid because the San Carlos Apache Tribe has created problems which discourage a person of ordinary prudence from investing time and labor in the claims. The allegations concerning the San Carlos Apache Tribe may or may not be true. They are, however, immaterial insofar as the present proceedings are concerned. The Department of the Interior has the authority to contest the validity of a mining claim. In such a proceeding the only issue presented is whether, under the mining laws, the claim is valid or invalid. If the evidence is sufficient to support a conclusion that the mining claim does not meet the requirements of the mining laws, I cannot conclude for reasons beyond and unrelated to the mining laws or for any

other reasons that the claim is valid or that it should not be declared invalid. Compare United States v. Frank Coston, A-30835, February 23, 1968.

ORDER

Pursuant to the prayers of the complaints, the Bright Star, Uncle Sam, Davis Basin Tunnel, Brushy Spring, Silver King, Christina, Taft, and Pearl lode mining claims are declared null and void on the grounds that they have not been perfected by the discovery of a valuable mineral deposit.

Robert W. Mesch
Administrative Law Judge